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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Darrel Peter Pandeli,

10 Petitioner,

11 v.

12 David Shinn, *et al.*,

13 Respondents.

14
15 No. CV-17-01657-PHX-JJT

16 **ORDER**

17 DEATH PENALTY CASE

18 Before the Court is Respondents' Motion for Reconsideration. (Doc. 118.) They ask
19 the Court to reconsider, pursuant to Local Rule 7.2(g), its order granting Pandeli's motion
20 under *Rhines*¹ to stay these proceedings and hold them in abeyance while he exhausts
claims in state court. As directed by the Court, Pandeli filed a response to the motion. (Doc.
21 121.) Respondents filed a reply. (Doc. 122.) The motion is denied for the reasons set forth
22 below.

23 **DISCUSSION**

24 A court will ordinarily deny "a motion for reconsideration of an Order absent a
25 showing of manifest error or a showing of new facts or legal authority that could not have
26 been brought to its attention earlier with reasonable diligence." LRCiv 7.2(g)(1). A motion
27 for reconsideration is appropriate only where the district court "(1) is presented with newly
discovered evidence, (2) committed clear error or the initial decision was manifestly unjust,
or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah*

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1 *Rhines v. Weber*, 544 U.S. 269 (2005).

1 *County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Motions for reconsideration
 2 should be granted only in rare circumstances. *Defenders of Wildlife v. Browner*, 909 F.
 3 Supp. 1342, 1351 (D. Ariz. 1995). They should not be used to ask a court ““to rethink what
 4 the court had already thought through—rightly or wrongly.”” *Id.* (quoting *Above the Belt,*
 5 *Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). Nor may they “be
 6 used to raise arguments or present evidence for the first time when they could reasonably
 7 have been raised earlier in the litigation,” *Kona Enterprises, Inc. v. Estate of Bishop*, 229
 8 F.3d 877, 890 (9th Cir. 2000), or to repeat any argument previously made in support of or
 9 in opposition to a motion, *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215
 10 F.R.D. 581, 586 (D. Ariz. 2003). Finally, mere disagreement with a previous order is an
 11 insufficient basis for reconsideration. See *Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572,
 12 1573 (D. Haw. 1988).

13 In their “omnibus” response to Pandeli’s request for leave to file a motion to stay
 14 and abey, Respondents stated: “Here, Pandeli filed a mixed petition.” (Doc. 111 at 5; see
 15 Doc. 115 at 2.) Respondents also acknowledged in their answer to Pandeli’s petition that
 16 “Claim 1 was a mixed claim in which some subclaims were exhausted and some were not.”
 17 (*Id.* at 5–6.)

18 Now, however, Respondents contend that the Court committed “manifest error
 19 caused by their own mistaken characterization of Pandeli’s petition as mixed.”² (Doc. 118
 20 at 1.) Respondents argue that the petition is not mixed because all of the claims are
 21 exhausted, either by the state courts’ merits review or technically exhausted because
 22 Pandeli would be barred from raising them in a successive PCR petition. (Doc. 118 at 3-4.)
 23 Specifically, they assert that Claim 1, alleging ineffective assistance of counsel, would be
 24 deemed waived and precluded under Rule 32.1(a) of the Arizona Rules of Criminal
 25 Procedure.

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 28 ² Only mixed petitions—those containing both exhausted and unexhausted claims—or
 petitions containing only unexhausted claims are subject to a stay under *Rhines*. See *Mena*
v. Long, 813 F.3d 907, 912 (9th Cir. 2016).

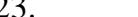
Respondents' argument is not appropriate for a motion to reconsider. *See Kona Enterprises*, 229 F.3d at 890. They had the opportunity in their response to Pandeli's motion to argue that the petition was not mixed, but instead took the opposite position and analyzed his stay request by applying the *Rhines* standard. (Doc. 111 at 4–8.)

Respondents are also asking the Court to rethink what it has already thought through. *Defenders of Wildlife*, 909 F. Supp. at 1351; see *Am. States Ins. v. Ins. Co. of Penn.*, 245 F. Supp. 3d 1224, 1226 (E.D. Cal. 2017) (denying reconsideration where defendants “improperly attempt[] to take a ‘second bite’ at issues already decided against [them].”). As Pandeli notes, the Court’s decision to grant a stay under *Rhines* was not based solely on Respondents’ concession that the petition was mixed. The Court also took into account Pandeli’s arguments about the potential effect of *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022), on a habeas petitioner’s opportunity to present new evidence. The Court cited *Guevara-Pontifes v. Baker*, No. 3:20-cv-00652-ART-CSD, 2022 WL 4448259 (D. Nev. September 23, 2022), where the district court rejected the argument, similar to that made by Respondents here, that the state’s procedural bar rules would render a return to state court futile. *Id.* at *4–5; see *Pandeli v. Shinn*, No. CV-17-01657-PHX-JJT, 2022 WL 16855196, at *5 (D. Ariz. Nov. 10, 2022).

Accordingly,

IT IS ORDERED that Respondents' Motion for Reconsideration (Doc. 118) is **DENIED**.

Dated this 6th day of January, 2023.

2023.

Honorable John J. Tuchi
United States District Judge